IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 850 OF 2002

Ibrahim @ Babu Hussainsab Shaikh)
Age 55 years, r/o Jawahar Nagar,)
Zopadpatti, Solapur)...Appellant

Versus

The State of Maharashtra ...Respondent

Smt. Sonia Miskin (appointed) for the appellant.
Smt. V.R. Bhosale, Additional Public Prosecutor, for the State.

CORAM: **V.G. PALSHIKAR, Ag. C.J., &**
SMT. NISHITA MHATRE, J.

DATE: **AUGUST 24, 2006**.

ORAL JUDGMENT (Per Palshikar, Ag. C.J.)

Being aggrieved by the judgment and order of conviction recorded by the IV Additional Sessions Judge, Solapur, in Sessions Case No. 214 of 2001, convicting the accused and sentencing him to suffer rigorous imprisonment for life under Section 302 of the Indian Penal Code, the appellant above named has filed this appeal.

2. With the assistance of the learned counsel for the accused

and the learned Additional Public Prosecutor, we have scrutinised the record and re-appreciated the evidence on record. The prosecution story as emerges from re-appreciation of evidence stated briefly is as under:-

3. This is a case of filicide. The accused in this case, according to the prosecution, stabbed his son to death because of intermittent quarrels between them. Deceased Hussainsab was the son of accused Ibrahim. The quarrel between the two was due to the conduct of the victim in deserting his wife. The accused wanted the victim to bring the daughter-in-law home and live with her happily which the son denied and, therefore, they used to quarrel with each other.

4. On 28th June, 2001, at about 8.30 p.m., accused, his wife, daughter and son-in-law were sitting in their home in Solapur. The victim was also present there. The accused asked in front of all as to why the victim was not leading a peaceful married life with Sharifabi and he, therefore, started abusing the son in filthy language. The son requested the father not to abuse him in such language. That enraged the father. He took a knife in his hand and stabbed two blows in the abdomen of the son. The son was removed to the hospital where

ultimately he died.

5. The prosecution arrested the accused, investigation was conducted and the learned Judge convicted the accused as aforesaid. It is this order of conviction which is impugned in this appeal.

6. The prosecution examined as many as ten witnesses to prove its case. They include the eye witnesses who are near relations of the accused and who have no reason to speak anything else but the truth. The cause of dispute between the two is proved. The fact that the two were usually quarrelling is also proved. It has come on record that there was a heated exchange of words and abuse between the accused and the victim as a result of which the accused stabbed the victim because of which he later on died.

7. In our opinion, the learned Judge has considered all these aspects and has given cogent findings on appreciation of the evidence on record. As aforesaid, we have also re-appreciated the evidence and we have no hesitation in confirming the findings recorded by the learned trial Judge.

8. The only error, in our opinion, which is committed by the trial Court is convicting the accused under Section 302 of the I.P.C. The learned Judge should have appreciated that the two stab blows were as a result of a quarrel which arose at the time of the incident. The accused, who is the father, was enraged by his son's conduct of answering back the father and, therefore, in the heat of passion he stabbed his son with a knife. There is no evidence on record to show that the enmity between the two was such that the accused would harbour an intention to kill his son. It is obviously a sudden outburst of emotions on the part of the father that resulted in grievous stabbing of the son. There are several judgments of the Supreme Court of India where the Supreme Court of India has observed categorically that in case of one or two stab blows immediately after a quarrel cannot spell out an intention to commit murder. If the injuries are of such nature as the doer of it does not know that the same would result in death, then the proper way is to convict the accused under Section 304 Part-II of Indian Penal Code. In this case, the accused has stabbed his son in the presence of the relations. His stabbing was all of a sudden and the stabs were in the abdomen. Taking into consideration the quarrel and the stab injuries, it cannot be said that the accused knew that by stabbing in the abdomen he would cause death of his son. This case,

therefore, squarely falls under Section 304 Part-II of I.P.C. and the accused is entitled to this benefit.

8. In the result, the appeal is partly allowed. The judgment and sentence under Section 302 is set aside. Instead, the accused is convicted under Section 304 Part II of the Indian Penal Code to suffer rigorous imprisonment for a period of five years. The accused is in jail for the last five years or more. If he has undergone sentence as pronounced by us, he is liable to be set at liberty forthwith, if not otherwise required in law. The appeal is accordingly disposed of.